

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal

s20 Adams	s44 Farley	s58 Kennedy	s54 Nozzolio	s28 Serrano
s15 Addabbo	s02 Flanagan	s34 Klein	s53 O'Mara	s51 Seward
s55 Alesi	s08 Fuschillo	s26 Krueger	s37 Oppenheimer	s09 Skelos
s11 Avella	s59 Gallivan	s24 Lanza	s21 Parker	s14 Smith
s40 Ball	s12 Gianaris	s39 Larkin	s13 Peralta	s25 Squadron
s42 Bonacic	s22 Golden	s01 LaValle	s30 Perkins	s16 Stavisky
s46 Breslin	s47 Griffo	s52 Libous	s61 Ranzenhofer	s35 Stewart- Cousins
s38 Carlucci	s60 Grisanti	s45 Little	s48 Ritchie	
s50 DeFrancisco	s06 Hannon	s05 Marcellino	s33 Rivera	s49 Valesky
s32 Diaz	s36 Hassell-	s07 Martins	s56 Robach	s57 Young
s17 Dilan	Thompson	s62 Maziarz	s41 Saland	s03 Zeldin
s29 Duane	s10 Huntley	s43 McDonald	s19 Sampson	s27
s31 Espaillat	s04 Johnson	s18 Montgomery	s23 Savino	

S. -----
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

a049 Abbate	a085 Crespo	a042 Jacobs	a121 Miller, D.	a067 Rosenthal
a092 Abinanti	a107 Crouch	a095 Jaffee	a102 Miller, J.	a118 Russell
a105 Amedore	a014 Curran	a057 Jeffries	a038 Miller, M.	a144 Ryan
a084 Arroyo	a063 Cusick	a135 Johns	a052 Millman	a012 Saladino
a035 Aubry	a045 Cymbrowitz	a112 Jordan	a015 Montesano	a113 Sayward
a124 Barclay	a034 DenDekker	a099 Katz	a132 Morelle	a029 Scarborough
a103 Barrett	a081 Dinowitz	a074 Kavanagh	a039 Moya	a016 Schimel
a040 Barron	a114 Duprey	a145 Kearns	a003 Murray	a140 Schimminger
a082 Benedetto	a004 Englebright	a065 Kellner	a037 Nolan	a064 Silver
a122 Blankenbush	a054 Espinal	a129 Kolb	a128 Oaks	a027 Simanowitz
a055 Boyland	a071 Farrell	a025 Lancman	a069 O'Donnell	a036 Simotas
a008 Boyle	a123 Finch	a091 Latimer	a051 Ortiz	a100 Skartados
a026 Braunstein	a007 Fitzpatrick	a013 Lavine	a136 Palmesano	a146 Smardz
a044 Brennan	a137 Friend	a050 Lentol	a088 Paulin	a079 Stevenson
a116 Brindisi	a143 Gabryszak	a125 Lifton	a141 Peoples-	a011 Sweeney
a131 Bronson	a090 Galef	a072 Linares	Stokes	a110 Tedisco
a046 Brook-Krasny	a133 Gantt	a127 Lopez, P.	a058 Perry	a115 Tenney
a147 Burling	a077 Gibson	a053 Lopez, V.	a087 Pretlow	a002 Thiele
a117 Butler	a149 Giglio	a001 Losquadro	a073 Quart	a061 Titone
a101 Cahill	a066 Glick	a126 Lupardo	a021 Ra	a031 Titus
a096 Calhoun	a023 Goldfeder	a111 Magee	a097 Rabbitt	a062 Tobacco
a043 Camara	a150 Goodell	a120 Magnarelli	a009 Raia	a148 Walter
a106 Canestrari	a075 Gottfried	a059 Maisel	a006 Ramos	a041 Weinstein
a089 Castelli	a005 Graf	a060 Malliotakis	a134 Reilich	a020 Weisenberg
a086 Castro	a098 Gunther	a030 Markey	a109 Reilly	a024 Weprin
a138 Ceretto	a130 Hanna	a093 Mayer	a178 Rivera, J.	a070 Wright
a033 Clark	a139 Hawley	a019 McDonough	a080 Rivera, N.	a094 Zebrowski
a047 Colton	a083 Heastie	a104 McEneny	a076 Rivera, P.	
a010 Conte	a028 Hevesi	a017 McKevitt	a119 Roberts	
a032 Cook	a048 Hikind	a108 McLaughlin	a056 Robinson	
a142 Corwin	a018 Hooper	a022 Meng	a068 Rodriguez	

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

CIVPRLA *Office of Court Adminis-
tration 94 R-1*
(Relates to requiring certificates
of merit in certain residential
foreclosure actions)

CPLR. cert merit res foreclosure

AN ACT

to amend the civil practice law and
rules, in relation to residential
foreclosure actions

The People of the State of New
York, represented in Senate and
Assembly, do enact as follows:

1) Single House Bill (introduced and printed separately in either or both
houses). Uni-Bill (introduced simultaneously in both houses and printed as one
bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed
copies of bill and 4 copies of memorandum in support (single house); or 4 signed
copies of bill and 8 copies of memorandum in support (uni-bill).

1 Section 1. The civil practice law and rules is amended by adding a new
2 section 3012-b to read as follows:

3 § 3012-b. Certificate of merit in certain residential foreclosure
4 actions. (a) In any residential foreclosure action involving a home
5 loan, as such term is defined in section thirteen hundred four of the
6 real property actions and proceedings law, in which the defendant is a
7 resident of the property subject to foreclosure, the complaint shall be
8 accompanied by a certificate, executed by the attorney for the plain-
9 tiff, certifying that the attorney has reviewed the facts of the case
10 and that, based on consultation with authorized representatives of the
11 plaintiff and the attorney's review of pertinent documents, including
12 the mortgage, security agreement and note or bond underlying the mort-
13 gage executed by the residential defendant and all instruments of
14 assignment, if any, or any other instrument of indebtedness, there is a
15 reasonable basis for the commencement of such action and that the plain-
16 tiff is currently the creditor entitled to enforce rights under such
17 documents. Such certificate shall attach a copy of the mortgage, securi-
18 ty agreement and note or bond underlying the mortgage executed by the
19 residential defendant and all instruments of assignment.

20 (b) Where a certificate is required pursuant to this section, a single
21 certificate shall be filed for each action even if more than one defend-
22 ant has been named in the complaint or is subsequently named.

23 (c) The provisions of subdivision (d) of rule 3015 of this article
24 shall not be applicable to a defendant resident of the property subject
25 to foreclosure who is not represented by an attorney.

26 (d) If a plaintiff willfully fails to provide copies of the papers and
27 documents as required by subdivision (a) of this section and the court
28 finds, upon the motion of any party or on its own motion on notice to

1 the parties, that such papers and documents ought to have been provided,
2 the court may dismiss the complaint or make such final or conditional
3 order with regard to such failure as is just including but not limited
4 to denial of the accrual of any interest, costs, attorneys' fees and
5 other fees, relating to the underlying mortgage debt. Any such dismissal
6 shall not be on the merits.

7 § 2. Subdivision (a) of rule 3408 of the civil practice law and rules,
8 as amended by chapter 507 of the laws of 2009, is amended to read as
9 follows:

10 (a) In any residential foreclosure action involving a home loan as
11 such term is defined in section thirteen hundred four of the real prop-
12 erty actions and proceedings law, in which the defendant is a resident
13 of the property subject to foreclosure, plaintiff shall file proof of
14 service within twenty days of such service, however service is made, and
15 the court shall hold a mandatory conference within sixty days after the
16 date when proof of service upon such defendant resident is filed with
17 the county clerk, or on such adjourned date as has been agreed to by the
18 parties, for the purpose of holding settlement discussions pertaining to
19 the relative rights and obligations of the parties under the mortgage
20 loan documents, including, but not limited to determining whether the
21 parties can reach a mutually agreeable resolution to help the defendant
22 avoid losing his or her home, and evaluating the potential for a resol-
23 ution in which payment schedules or amounts may be modified or other
24 workout options may be agreed to, and for whatever other purposes the
25 court deems appropriate.

26 § 3. This act shall take effect immediately and shall apply to actions
27 commenced on or after such effective date; provided, however that the
28 amendments to subdivision (a) of rule 3408 of the civil practice law and

1 rules made by section two of this act shall not affect the expiration of
2 such subdivision and shall be deemed to expire therewith.



IN SUPPORT OF

S.

A.

AN ACT to amend the civil practice law and rules, in relation to residential foreclosure actions

This is one in a series of measures being introduced at the request of the Chief Administrative Judge upon the recommendation of her Advisory Committee on Civil Practice.

This measure would add a new section 3012-b to the CPLR in relation to residential foreclosure actions. This new section would create a procedure whereby the plaintiff lender's attorney must take certain steps to ascertain that his or her client has standing to maintain the action. Specifically, before commencing such an action, he or she must be assured that the plaintiff he or she represents holds the instrument of indebtedness in the action. To evidence that the plaintiff's attorney has received such assurance, the complaint he or she files in the action must be accompanied by a certificate, executed by the plaintiff's attorney, declaring that the attorney has reviewed the merits of the action and that, based upon consultation with authorized representatives of the plaintiff or the attorney's review of pertinent documents, the attorney has concluded on the basis of that consultation or review that there is a reasonable basis for commencement of the action. Also, the plaintiff's attorney must attach to the complaint copies of the relevant instruments of indebtedness and any instruments of assignment. This measure would also amend rule 3408 of the CPLR to require a plaintiff to file proof of service within 20 days of service. This amendment will supply the necessary ingredient to ensure participation by the parties in the mandatory foreclosure conference with the court.

We believe that, in addition to helping the bar by clarifying in statute the plaintiff attorney's obligation to the court in a residential foreclosure action, this measure is an appropriate public policy response to the crisis in foreclosure cases. Statutory reform is needed to ensure the integrity of the mortgage foreclosure process and eliminate the cases brought

without standing or merit. This measure seeks to prevent completely the problem of “shadow dockets” in residential foreclosure actions, a problem unforeseen at the time the recent affirmations rule was promulgated by administrative order. Under this measure, the trial court would have reasonable assurance that all of the instruments of indebtedness underpinning these actions, including any UCC Article 9 document evidencing a security interest in the note, and all instruments of assignment, if any, are in place at the commencement of the action.

This measure, which would have no fiscal impact on the State, would take effect immediately.

Legislative History: None. New proposal.